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General Accounting Office
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Office of the General Counsel

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April 23, 1998

The Honorable John McCain
Chairman
The Honorable Ernest F. Hollings
Ranking Minority Member
Committee on Commerce, Science, and Transportation
United States Senate

The Honorable Thomas J. Bliley, Jr.
Chairman
The Honorable John D. Dingell
Ranking Minority Member
Committee on Commerce
House of Representatives

Subject: Federal Communications Commission: Installment Payment Financing for
Personal Communications Services (PCS) Licensees

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Federal Communications Commission (FCC), entitled "Installment Payment Financing for Personal Communications Services (PCS) Licensees" (WT Docket No. 97-82; FCC 98-46). We received the rule on March 30, 1998. It was published in the Federal Register as a final rule on April 8, 1998. 63 Fed. Reg. 17111.

The final rule is an amendment of the FCC's above-entitled rule following consideration of petitions for reconsideration. The rule makes certain modifications designed to provide C block licensees greater flexibility in making their elections and will allow existing licensees greater ability to adjust their business plans and remain in the wireless market to compete against other providers. It also provides for the return of spectrum to the FCC so that other entrepreneurs will have opportunities to obtain broad band PCS licenses in a reauction.

The requirement that a licensee must make the same election for all its licenses is eliminated. Instead, a licensee may make different elections for the different Major Trading Areas (MTAs) in which it holds licenses.

Also, the amnesty and disaggregation options are modified. Under the revised amnesty option, a licensee may return to the FCC licenses in any MTA it wishes so long as it returns all its Basic Trading Areas (BTAs) licenses within the MTA. The entire outstanding debts on the returned licenses will be forgiven and the licensee will be free to reacquire its returned licenses. However, the licensee will receive no credit for the down payment associated with the returned spectrum. Alternatively, the licensee may forgo the opportunity to bid on the returned licenses in exchange for a credit of 70 percent of the down payment made. This credit must be used toward prepayment of the entire principal owed for a retained MTA with either 30 MHz or 15 MHz licenses. Finally, the FCC will permit a combination of prepayment and disaggregation, so that the licensee may prepay the entire principal owed for the retained 15 MHz license of an MTA that has been disaggregated.

A licensee that disaggregates an MTA may continue making installment payments on the retained spectrum. For each such disaggregated license, the licensee will now receive credit for 40 percent of the down payment applicable to the returned 15 MHz of spectrum. This 40 percent credit must be applied only to the 15 MHz of spectrum retained from the same license. It may be used to reduce the principal outstanding and/or unpaid simple interest accruing from the date of license grant through March 31, 1998. A licensee will also be allowed to prepay the 15 MHz licenses retained in a disaggregated MTA. In that case, the licensee will receive credit for 70 percent of the down payment applicable to the returned spectrum.

Enclosed is our assessment of the FCC's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. Our review indicates that the FCC complied with the applicable requirements.

If you have any questions about this report, please contact James Vickers, Assistant General Counsel, at (202) 512-8210. The official responsible for GAO evaluation work relating to the Federal Communications Commission is Judy England-Joseph, Director for Housing and Community Development Issues. Ms. England-Joseph can be reached at (202) 512-7631.

Robert P. Murphy
General Counsel

Enclosure

cc: Ms. Kathleen Fagan
AMD-Performance Evaluation and
Records Management
Federal Communications Commission

ANALYSIS UNDER 5 U.S.C. § 801(a)(1)(B)(i)-(iv) OF A MAJOR RULE
ISSUED BY
THE FEDERAL COMMUNICATIONS COMMISSION
ENTITLED
"INSTALLMENT PAYMENT FINANCING FOR
PERSONAL COMMUNICATIONS SERVICES (PCS) LICENSEES"
(WT Docket No. 97-82; FCC 98-46)

(i) Cost-benefit analysis

The FCC, in its report to our Office, states that it was not required to prepare and did not prepare a cost-benefit analysis of the final rule.

(ii) Agency actions relevant to the Regulatory Flexibility Act, 5 U.S.C. §§ 603-605, 607, and 609

The FCC prepared both an Initial Regulatory Flexibility Analysis and a Final Regulatory Flexibility Analysis in connection with the prior proposed and final rules, respectively. A Supplemental Final Regulatory Flexibility Analysis was prepared for this rule's modifications to the prior final rule.

The analysis describes the reason for the rule and the legal basis for it. It also describes the small entities; the number affected by the rule; the recordkeeping, reporting, and other compliance requirements; and the steps taken to minimize the burden on small entities.

The major purpose of the rule is to reduce the economic burden on C block licensees, which are small entities. The analysis also discusses the alternatives which the FCC decided not to adopt, including a further deferral of the payment resumption deadline and full credit for down payments made on licenses or spectrum returned for reauction.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

As an independent regulatory agency, the FCC is not subject to title II of the Unfunded Mandates Act of 1995.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 *et seq.*

The final rule was issued pursuant to the notice and comment provisions of 5 U.S.C. § 553. On October 24, 1997, the FCC published in the Federal Register a Second Report and Order and Further Notice of Proposed Rulemaking, 62 Fed. Reg. 55348.

In response to the notice, the FCC received 37 petitions for reconsideration, 17 oppositions to the petitions, 16 replies to the oppositions, and 38 ex parte filings. In the preamble to the final rule, the FCC discusses the issues raised in these petitions and filings and the actions it took in response to them.

Paperwork Reduction Act, 44 U.S.C. §§ 3501-3520

The final rule contains a revision to a previously approved information collection. The FCC has requested an emergency revision approval by the Office of Management and Budget (OMB) of OMB Control No. 3060-0801.

The preamble to the final rule contains the information required by the Paperwork Reduction Act, including the need for and use of the information collection, a description and the number of respondents, and an estimate of the annual burden hours. The collection is estimated to take 0.5 to 4.89 hours to complete for an annual burden time of 1,687.5 hours for the 345 respondents at a cost of \$69,592.

The FCC is requesting approval by April 30, 1998, and will receive comments until April 27, 1998.

Statutory authorization for the rule

The final rule was issued pursuant to the authority of sections 4(i), 303(r) and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), and 309(j).

Executive Order No. 12866

The rule, promulgated by an independent regulatory agency, is not subject to the review requirements of Executive Order No. 12866.